right and adopt. A member is not invested with a personal right to have all the provisions of the memorandum and articles duly observed. *Cotter* v. *National Union of Seamen*[13] is a case in point. It is no doubt a trade union case but the same principles apply. The dividing line between personal rights and corporate rights is at times very difficult to draw.

The application is dismissed. The costs of both parties, to be taxed as between solicitor and client, are to be paid out of the assets of the company.

Application dismissed.

Solicitors: *Maxwell, Kenion, Cowdy & Jones; Soo Wai Sun & Co.*

MUNIANDY v. CHAIRMAN, PETALING JAYA TOWN BOARD & ANOR.

[O.C.J. (Abdul Hamid J.) March 3, 1972]

[Kuala Lumpur — Civil Suit No. 1017 of 1967]

Negligence — Duty of care in reversing lorry — Failure to exercise due care.

Damages — Leg — Compound fracture of left leg — ¼" shortening — Blood supply damaged.

The plaintiff was one of a team of labourers accompanying the first defendant's lorry on rounds collecting refuse. He claimed damages for personal injuries suffered in an accident which occurred when the second defendant, the driver, was reversing the lorry into a major road. The plaintiff sustained a severe compound fracture on his left leg. The evidence disclosed that the second defendant was told to stop but proceeded to reverse the lorry a second time without receiving prior signal.

Held: (1) it was the duty of the second defendant to exercise a proper look out when driving. In particular when reversing a lorry of the kind and size he was driving on the day of the accident, it was his duty to exercise greater care as he was reversing into a major road and was unable to see the rear of the lorry except for a restricted view visible from the rear view of the mirror;

(2) in the circumstances of the case $23,000 would be a fair compensation for pain and suffering and loss of amenities and $7,000 for loss of future earnings.

CIVIL SUIT.

E. V. Devadason for the plaintiff.

Raja Abdul Aziz (*Wan Ariff bin Wan Hamzah* with him) for the defendant.

Abdul Hamid J.: The plaintiff's claim is for personal injury suffered in an accident that occurred while the first defendant's Town Board lorry BP 7260 was being reversed.

On 2nd August 1966 the plaintiff was one of a team of labourers accompanying the first defendant's lorry on rounds collecting refuse in or about Petaling Jaya. The lorry entered Road 5/9D from Jalan Putri. The plaintiff and one Rengasamy (PW2) collected refuse along Road 5/9D. To get out, the lorry had to reverse into Jalan Putri — a major road. After collecting the refuse, the plaintiff got on to the step at the nearside rear of the lorry while PW2 stood on the step at the offside.

It is alleged that at the time the lorry started reversing there was a car parked along Jalan Putri towards the rear nearside of the lorry. The plaintiff said that he shouted to the driver of the lorry to stop. The driver of this car was asking for directions. Before the plaintiff could give the directions, the lorry suddenly reversed. The plaintiff got frightened and shouted. There was a collision and one of the plaintiff's legs was injured. Under cross-examination the plaintiff said that it was PW2 who shouted to the driver to stop whilst he himself did not do so. PW2 testified that it was he who signalled the driver to reverse. He did this while he was standing on the step at the rear offside of the lorry. He did tell the driver to stop the lorry by pressing the bell as there was a car parked along Jalan Putri. While giving directions to the driver of this car, the lorry reversed and collided with the car.

Apart from the testimony of the plaintiff and PW2 there is no other evidence to show that another motor-car was involved in the accident. The absence of such evidence however, does not justify my rejecting the evidence of the plaintiff and PW2 that an unknown motor-car was in fact parked along Jalan Putri. A sketch plan was produced but I am unable to derive any assistance from it. There is however this police report lodged by the second defendant that I think requires careful consideration. The report tends to support the testimony of the plaintiff and PW2. In this report it is stated by the second defendant that while reversing the lorry into Jalan Putri, he heard a voice stopping the lorry saying, "Hop-hop" and he thereupon applied the brake and stopped the lorry. He looked back and from the rear view mirror saw a motor-car pass along Jalan Putri. After that he again reversed the lorry and while reversing he heard noises at the back of the lorry. He applied the brake, stopped the lorry and alighted. He noticed that the plaintiff's leg was injured — "Terkena pada tangga kiri belakang" (hit by left rear step).

After carefully considering the evidence, it would seem to me that when the second defendant reversed the second time, that is, after having been told to stop, he had done so without receiving prior signal. It is needless to say that the duty on the part of the driver is heavy. It is his duty to exercise proper lookout when driving. In particular when reversing a lorry of the kind and size the second defendant was shown to have driven on the day of the accident, it was his duty to exercise greater care as he was reversing into a major road and was unable to see the rear of the lorry except for the restricted view visible from the rear view mirror. Furthermore it was, undeniably, his practice to get the signal from the labourers accompanying the lorry before reversing.

Although DW1 testified that he received signal from the plaintiff, I cannot, in the light of the evidence of the plaintiff and PW2 and the police report, accept his evidence.

For what it is worth, there is also the evidence of Dr. Balasubramaniam (PW3) the surgeon who examined the injury on the left leg of the plaintiff who stated that it was a "crush injury" meaning that

the injury suffered was as a result of the leg coming between two hard objects consistent with the plaintiff's and PW2's evidence that the rear of the lorry had knocked against this unknown motor-car.

For reasons which I have stated, it is my considered judgment that DW1 was solely to blame. I therefore entered judgment for the plaintiff and awarded a sum of $450 special damages as agreed.

As for general damages, I have taken into consideration the cases which have been cited to me by counsel for the plaintiff and in particular I have borne in mind that the plaintiff suffered from severe compound fracture of his left leg as a result of this crush injury and that he had to undergo prolonged treatment. Dr. Balasubramaniam in his report is further of the opinion that the crush injury has also damaged the blood supply of his left leg "and he now has a Volkmann's ischaemic contracture of left leg and foot. As a result of this injury to the blood supply, the muscles of left leg and foot had necrosed (dead) and became fibrotic. The extensive scarring of the muscles of left leg and foot has produced the deformity of left ankle and foot (equinus-cavus deformity). The fracture of left tibia has united in malposition, causing a 40° external rotation deformity of the leg. It has also produced ¾ inch shortening of the left leg. The shortening of the left leg is permanent. The Volkmann's ischaemic contracture of his left leg and foot is permanent. The dead muscles of his left leg and foot will not recover. The equino-cavus deformity of his left foot could be corrected surgically."

In the light of the permanent injury suffered by the plaintiff, it is highly unlikely that the plaintiff will be able to secure any employment. According to the plaintiff it still hurts if he were to put his leg on the ground.

In the circumstances, it is my view that $23,000 would be a fair compensation for pain and suffering and loss of amenities. As for loss of earnings, I calculated it at an average loss of $100 per month. At the date of hearing the plaintiff was 48 years old and on the basis of 7 years' purchase, I assess loss of future earnings at $7,000.

The total award for special and general damages is $30,450 and out of this sum, it is agreed that $5,143.68 paid under the Workmen's Compensation Ordinance be deducted.

Costs to the plaintiff.

Claim allowed.

Solicitors: *Devadason & Co.; Rithaudeen & Aziz.*

GOH KOK LAY v. HOR SIAK & ANOR.

[O.C.J. (Suffian F.J.) March 4, 1972]

[Kuala Lumpur — Raub Civil Suit No. 34 of 1968]

Damages — Fracture of occipital bone — Diminution of sense of smell — Recurrent headaches — General damages.

The plaintiff, aged 24, a lorry attendant, earning $200 monthly salary, was riding in a lorry driven by the first defendant, when it over-turned. As a result of the accident he suffered a fracture of the occipital bone, a diminution of his sense of smell, and a tendency to get recurrent headaches when working in the sun, and this prevented him from working long hours continuously.

He sued the first defendant as well as the second defendant, their common employer, for damages for injuries suffered by him. Liability was admitted, and special damages were agreed at $150. On the question of general damages,

Held: an award of $7,500 as general damages was considered a fair amount.

Cases referred to:-

(1) *Low Hork Guan* v. *William Drylie Gray* [1968] 2 M.L.J. xxii.

(2) *Woon Joke Buay* v. *Chan Eng Kian* [1968] 1 M.L.J. xliii.

SUIT.

Inderjit Singh for the plaintiff.

Kam Woon Wah for the defendants.

Suffian F.J.: The plaintiff, a lorry attendant, was on 8th February, 1968, riding in a lorry driven by the first defendant from the direction of Bentong when it overturned near Bukit Tinggi on the mountain road towards Kuala Lumpur. The plaintiff sued the first defendant as well as the second defendant, their common employer, for damages for injuries suffered by him. Liability is admitted and $150 special damages are agreed and the only question for my determination is the quantum of general damages.

The relevant facts as I find them are as follows.

The plaintiff was on the day of the accident admitted into the District Hospital, Bentong, where he stayed for five days after which he was transferred to the General Hospital at Kuala Lumpur where he stayed from 13th until 26th February, 1968. So he was hospitalised 19 days in all.

At the General Hospital in Kuala Lumpur he was referred to the neurosurgical unit on 16th February, 1968. They found him in coma II, meaning he was conscious but somewhat lethargic, but he responded to verbal commands. His pupils were equal and reactive and he was able to move all four limbs. He had no neurological deficit, meaning he was free from any evidence of increased intracranial pressure from blood clots. An X-ray of the skull showed fracture of the occipital bone.

On 3rd July, 1968, he was again seen by the neurological unit. He was found to be well, except that he complained of headache whenever he went out in the sun.

Dr. A. Mohandas of the neurosurgical unit at the Kuala Lumpur General Hospital (PW1) examined him